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No. 97-540

Supreme Court, U.S.
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OCT 27 1997
CLERK

In The

Supreme Court of the United States

October Term, 1997

ZYZY, INC., and ZYZY, INC., d/b/a GUIDE PUBLISHING CO.; and REX S. MCBEATH,

Petitioners,

v.

CITY OF EAGLE PASS, TEXAS; RAUL TREVINO, Individually; JOSE MORA, Individually; JOSE FRANCISCO FARIAS, Individually; RAUL TREVINO, JOSE MORA, and JOSE FRANCISCO FARIAS, In Their Official Capacities,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether there is a circuit split on the standard of review to be applied to jury instruction error in cases implicating constitutional rights?

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OPINION BELOW

The summary order of the court of appeals is submitted in the Petitioners' appendix "A." Pet. App. at A-1 – A-7. The order is not officially reported.

JURISDICTION

The order of the court of appeals was entered on June 27, 1997. The petition for a writ of certiorari was filed on September 25, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1994).

STATEMENT OF THE CASE

For thirty years, The News Guide ("The Guide") was the only newspaper in Eagle Pass, Texas that satisfied the requirements under state law to carry public and legal notices for the City. *See* Tex. Gov't Code Ann. § 2051.044 (West 1997). Thus, The Guide was the only newspaper that carried the City's public notices. The Guide existed in this competition-free marketplace for many years. The market for public and legal notices and other city advertising became more competitive in 1991 when The News Gram ("The Gram") requested the City's advertising business. Def.'s Trial Ex. 6A. In 1993, the city attorney rendered a legal opinion that The Gram was legally qualified under state law to carry public and legal notices and other advertising. Def's Trial Ex. 6I. In 1994, the City was notified by the Texas Press Association that The Gram qualified under state law to carry such notices. Def.'s

Trial Ex. 12B. By 1993, The Gram started to get a small portion of the City's business from time to time. The City was then faced with the dilemma of how to choose between the two newspapers for the bulk of its business.

Upon the advice of its city attorney that it was required to do so, on June 28, 1993, the City adopted Ordinance No. 93-12, which set in place a competitive bidding process for its public notice business. *See* Resp. App. at 1-3. Although state law did *not* require such a procedure for home rule cities, like Eagle Pass, but rather only for a certain type of general-law city, *see* Tex. Local Gov't Ann. §§ 52.001, 52.004 (West 1997), neither state nor federal law prohibited such a procedure for Eagle Pass. *See* Resp. App. at 5-7.

Pursuant to Ordinance 93-12, the City held a competitive bid for its public notice business in September of 1994. The Gram submitted the lower bid. As a result, the City committed all of its legal and public notice business to The Gram for the 1994-95 fiscal year. Def's Trial Ex. 7B.

The Guide subsequently filed this lawsuit in December 1994 to recapture the City's business. The Guide claimed that the City switched its legal public notice business in retaliation for The Guide's negative editorials regarding city officials who voted on the competitive bids. After an intensive, one-week trial, a great deal of testimony on both sides, and the entry of numerous, voluminous documentary exhibits into evidence, the jury found in favor of the City. Pet. App. at A-3.

Before sending the case to the jury, the trial court determined that the case was appropriately treated as a

case implicating First Amendment rights and that the parties' relative burdens were governed by *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977), which dealt with the retaliatory dismissal of public employees, and *North Miss. Communications, Inc. v. Jones*, 874 F.2d 1064 (5th Cir. 1989), which applied the *Mt. Healthy* standard to the withholding of public patronage by a government entity in retaliation for critical media coverage of the government entity's conduct.

There is no dispute that the general charge to the jury in this case was correct under the *Mt. Healthy* burden-shifting standard. Pet. App. at A-4. In the general charge, the district court instructed the jury appropriately on the relative burdens of the parties, Pet. App. at A-12 – A-17, and directed the jury to consider the jury instructions as a whole: "It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole." Pet. App. at A-8.

Although the court of appeals found that the *Mt. Healthy* test was stated correctly in the general charge to the jury, the parties, under a great deal of time pressure, agreed to last-minute changes in the jury questions, which then misstated the *Mt. Healthy* test. Pet. App. at A-26 – A-28.

In an unpublished per curiam opinion, the court of appeals upheld the jury's verdict, stating that the instructions, taken as a whole, "correctly convey the law." Pet. App. at A-4. The court reasoned: "The jury was instructed to 'keep in mind' the jury instructions while answering th[e jury] questions. The jury instructions properly set forth the *Mt. Healthy* test. While we agree with the plaintiffs that the jury questions themselves do not accurately

state the law, the jury instructions properly set forth the applicable test and, when read together, correctly convey the law." Pet. App. at A-4.

Having learned that its competitive bidding process was not required by state law and having endured this lawsuit in the wake of its first attempt to employ a competitive bidding process, the City decided on August 26, 1996 to repeal Ordinance 93-12. *See* Eagle Pass, Tex., Ordinance No. 96-16; Resp. App. at 8-10. In its place, the City has decided to alternate between The Guide and The Gram on a semi-annual basis. Resp. App. at 11. Both The Guide and The Gram were notified of the new policy by letter dated January 14, 1997. Resp. App. at 13, 14. Under the new plan, the Guide carried the City's public notices from January 15, 1997 through July 14, 1997. The Gram commenced carrying notices on July 15, 1997 and will carry them until January 14, 1998. Resp. App. at 11. The City has pledged to "make every effort to distribute all of its other advertising equally amongst all the News Media" and has decided not to designate "any print media as the City's official newspaper." Resp. App. at 11.

ARGUMENT

This case involves no circuit split and no important federal question requiring this Court's attention.

A. There Is No Circuit Split on the Standard of Review to Be Applied to Jury Instruction Error in Cases Implicating Constitutional Rights

In an attempt to manufacture a circuit split, Petitioner has mixed apples with oranges. The "likely to mislead" standard relates to the *jury's* state of mind and is applied by the reviewing court to assess whether the trial court's erroneous instructions were likely to confuse or mislead the jurors. In contrast, the "substantial and ineradicable doubt" standard addresses the level of certitude that the *appellate court* should have regarding the jury's confusion before it reverses a verdict reached in the wake of erroneous instructions. Neither standard is the subject of a circuit split.

The court in *Davis v. Ector County, Texas* properly explained the distinction:

> "The function of the reviewing court with respect to instructions is to satisfy itself that the instructions show no tendency to confuse or mislead the jury with respect to the applicable principles of law." . . [W]e will reverse if we conclude that the trial court erred with respect to the instructions proffered to the jury and that, based upon the record, the error affected the outcome of the case. In other words, does the charge "as a whole leave[] us with substantial and ineradicable doubt whether the jury has been properly guided in its deliberations"?

40 F.3d 777, 786 (5th Cir. 1994) (citations omitted).

1. The "Likely to Mislead" Standard

The "likely to mislead" standard identifies those erroneous jury instructions that should be considered for reversal. As one court observed: "On review of a trial court's charge to the jury, we must determine 'not whether the charge was faultless in every particular', but whether the jury was misled in any way and whether it had a correct understanding of the issues." *Bueno v. City of Donna*, 714 F.2d 484, 490-91 (5th Cir. 1983) (citation omitted). There is no competing standard on this issue. Indeed, despite the many instances of challenges to erroneous jury instructions, no court of appeals has ever stated that there was a split in the circuits on the question of the standard of review to be applied when jurors receive erroneous jury instructions. The Court's intervention in this settled area of the law is unnecessary.

All circuits that have spoken to the issue, including the Fifth Circuit, employ the "likely to mislead" standard for erroneous jury instructions in cases implicating constitutional rights. *See, e.g., Tatro v. Kervin*, 41 F.3d 9 (1st Cir. 1994); *Anderson v. Branen*, 17 F.3d 552, 556 (2d Cir. 1994); *United States v. Johnstone*, 107 F.3d 200, 204 (3d Cir. 1997); *Davis*, 40 F.3d at 786; *United States v. Pace*, 10 F.3d 1106, 1120-21 (5th Cir. 1993), *cert. denied*, 511 U.S. 1149 (1994); *Woodall v. City of El Paso*, 950 F.2d 255, 261 (5th Cir.), *cert. denied*, 506 U.S. 908 (1992); *Bueno*, 714 F.2d at 490-91; *Innes v. Howell Corp.*, 76 F.3d 702, 714 (6th Cir. 1996); *United States v. Easley*, 942 F.2d 405, 411 (6th Cir. 1991); *Doe v. Burnham*, 6 F.3d 476, 479 (7th Cir. 1993); *Westborough Mall, Inc. v. City of Cape Girardeau*, 794 F.2d 330, 335 (8th Cir.), *cert. denied*, 461 U.S. 945 (1986); *Masson v. New Yorker Magazine, Inc.*, 85 F.3d 1394, 1397 (9th Cir.

1996); *Gardetto v. Mason*, 100 F.3d 803, 816 (10th Cir. 1996); *Morro v. City of Birmingham*, 117 F.3d 508, 513 (11th Cir. 1997). " ' "The test is not whether the charge was faultless in every particular but whether the jury was misled." ' " *Westborough Mall*, 794 F.2d at 335 (citation omitted).

Most of the cases cited by Petitioner do not deal with constitutional issues and therefore are inapposite. *See, e.g., Luciano v. Olsten Corp.*, 110 F.3d 210 (2d Cir. 1997) (Title VII action); *Ayoub v. Spencer*, 550 F.2d 164 (3d Cir.), *cert. denied*, 432 U.S. 907 (1977) (medical malpractice); *Spell v. McDaniel*, 824 F.2d 1380 (4th Cir. 1987), *cert. denied*, *City of Fayetteville, N.C. v. Spell*, 484 U.S. 1027 (1988) (civil rights action); *National Union Fire Ins. Co. v. Cagle*, 68 F.3d 905 (5th Cir. 1995) (insurance fraud); *Federal Deposit Ins. Corp. v. Mijalis*, 15 F.3d 1314 (5th Cir. 1994) (breach of fiduciary duty, breach of contract, and negligence); *Bradshaw v. Freightliner Corp.*, 937 F.2d 197 (5th Cir. 1991) (products liability); *Petes v. Hayes*, 664 F.2d 523 (5th Cir. 1981) (products liability); *Houston v. Herring*, 562 F.2d 347 (5th Cir. 1977) (products liability); *Clarksville-Montgomery County Sch. Sys. v. United States Gypsum Co.*, 925 F.2d 993 (6th Cir. 1991) (products liability); *Cincinnati Fluid Power, Inc. v. Rexnord, Inc.*, 797 F.2d 1386 (6th Cir. 1986) (breach of contract); *Miller v. Utica Mill Speciality Mach. Co, Inc.*, 731 F.2d 305 (6th Cir. 1984) (products liability); *Binks Mfg. Co. v. National Presto Indus. Inc.*, 709 F.2d 1109 (7th Cir. 1983) (breach of contract); *Stoneking v. United States*, 232 F.2d 385 (8th Cir.), *cert. denied*, 352 U.S. 835 (1956), and *cert. denied*, 354 U.S. 941 (1957) (bank robbery and conspiracy conviction); *United States v. Tagalicud*, 84 F.3d 1180 (9th Cir. 1996) (conviction for conspiracy to defraud immigration and naturalization service); *United States v.*

Smith, 13 F.3d 1421 (10th Cir.), *cert. denied*, 513 U.S. 878 (1994) (mail fraud and money laundering conviction); *United States v. Starke*, 62 F.3d 1374 (11th Cir. 1995) (money laundering conviction); *Mark Seitman & Assoc., Inc. v. R.J. Reynolds Tobacco Co.*, 837 F.2d 1527 (11th Cir. 1988) (breach of contract). These cases uniformly apply the "likely to mislead" test in any event.

Like the opinion below, all the circuits consider the district court's jury instructions "as a whole." *Tatro*, 41 F.3d at 14; *Anderson*, 17 F.3d at 556; *Bennis v. Gable*, 823 F.2d 723, 727 (3d Cir. 1987); *United States v. Fleschner*, 98 F.3d 155, 158 (4th Cir. 1996), *cert. denied, Clarkson v. United States*, 117 S. Ct. 2484 (1997); *Davis*, 40 F.3d at 786; *Miller*, 731 F.2d at 307; *Doe*, 6 F.3d at 479; *Westborough Mall*, 794 F.2d at 335; *Masson*, 85 F.3d at 1397; *Gardetto*, 100 F.3d at 816; *Morro*, 117 F.3d at 513; *United States v. Washington*, 106 F.3d 983, 996-97 (D.C. Cir. 1997).

Respondent has not found any cases in which a court reversed a jury verdict simply on the ground that the jury questions differed from otherwise accurate general instructions. This is consistent with our system's faith in the institution of the jury and the general proposition that the jury is the representative of "the commonsense judgment of the community." *Teague v. Lane*, 489 U.S. 288, 314 (1989); *cf. Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969) ("The authority of an appellate court, when reviewing the findings of . . . jury, is circumscribed by the deference it must give to decisions of the trier of fact . . . . ").

2. The "Substantial and Ineradicable Doubt" Standard

The "substantial and ineradicable doubt" language that appears in the opinion below and on which Petitioner attempts to fabricate a circuit split addresses a completely separate issue from the "likely to mislead" standard. Unlike the "likely to mislead" language, which refers to the state of mind of the jury that has heard erroneous jury instructions, the "substantial and ineradicable doubt" language describes the requisite level of certitude of the appellate court that the jury was misled.[1] The courts of appeals that have addressed the issue have held that reversal is appropriate if the appellate court has "substantial and ineradicable doubt whether the jury has been properly guided." Pet. at 6. For example, one court has explained its approach to erroneous jury instructions as follows:

> In reviewing a trial court's jury instructions, an appellate court "look[s] to see whether the charges, considered as a whole, sufficiently instruct the jury so that the jurors understand the issues involved and are not misled." "Reversal is warranted only if we are left with 'a substantial and ineradicable doubt as to whether the jury was properly guided in its deliberations.' "

---

[1] Petitioner simply misunderstands the "substantial and ineradicable doubt" language when it states that "[t]he application of this test requires a determination that there is a substantial and ineradicable doubt *among the jurors* as to the correct law to be applied." Pet. at 6 (emphasis added).

Verbraeken v. Westinghouse Elec. Corp., 881 F.2d 1041, 1050 (11th Cir. 1989), *cert. dismissed*, 493 U.S. 1064 (1990) (citations omitted). *See Davis*, 40 F.3d at 786; *Westborough Mall*, 794 F.2d at 335; *First Dakota Nat'l Bank v. St. Paul Fire & Marine Ins. Co.*, 2 F.3d 801, 816 (8th Cir. 1993). The three circuits that have considered the issue of the requisite appellate court certitude regarding whether the jury was misled by erroneous jury instructions–the Fifth, the Eighth, and the Eleventh Circuits–have landed upon a single standard, the "substantial and ineradicable doubt" standard. All other circuits have been silent on the issue.

In sum, neither the "likely to mislead" standard nor the "substantial and ineradicable doubt" standard raises an important federal question, implicates a circuit split, or requires this Court's attention. *See* Sup. Ct. R. 10 (Considerations Governing Review on Certiorari).

B. This Case Is Moot

Even if this Court were inclined to entertain a question involving the standard of review to be applied to erroneous jury instructions in constitutional law cases, this case is not the proper vehicle because the case is moot. As this Court stated recently, "[t]o qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.' " *Arizonans for Official English v. Arizona*, 117 S. Ct. 1055, 1068 (1997) (citations omitted). There is no continuing controversy between The Guide and the City. The Guide's complaint rested on the claim that the competitive bidding process, codified in Eagle

Pass, Tex., Ordinance No. 93-12, was prompted by, susceptible to, and tainted by retaliatory motives in violation of the First Amendment. The ordinance underlying the claim of misconduct was repealed on August 26, 1996. Resp. App. at 8-10. It was replaced by a policy that splits the City's public notice business between The Guide and The Gram. As a result, The News Guide carried the City's public notices from January 25, 1997 through July 14, 1997. Resp. App. at 11.

There is no continuing case or controversy between the City and The News Guide. The offending bid procedure is no longer in existence and the business at issue is being divided evenly between the eligible newspapers.

C. There Is No Important Federal Question Raised by the Court of Appeals' Finding that It Had No "Substantial and Ineradicable Doubt That the Jury Was Properly Guided in Its Deliberations"

Petitioner suggests that this Court should grant certiorari in order to review the court of appeals' finding that it had no "substantial and ineradicable doubt that the jury was properly guided in its deliberations." Pet. at 13. Such an individualized finding raises no important federal question worthy of this Court's attention.

CONCLUSION

For the foregoing reasons, the petition for the writ of certiorari should be DENIED.

Respectfully submitted,

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RESPONDENT'S APPENDIX

ORDINANCES NO. 93-12

AN ORDINANCE ESTABLISHING PROCEDURES FOR THE ANNUAL SELECTION OF THE OFFICIAL PUBLICATION OF THE CITY OF EAGLE PASS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Charter of the City of Eagle Pass provides that certain ordinances shall be published in the official publication of the City of Eagle Pass; and

WHEREAS, Article 28a of the Texas Revised Civil Statutes provides the minimum requirements for qualifying as a legal publication; and

WHEREAS, Article 29a of the Texas Revised Civil Statutes provides for matters to be published in the official publication of a governmental entity; and

WHEREAS, Section 52.004 of the Texas Local Government Code requires the City of Eagle Pass after the beginning of each municipal year to contract, as determined by ordinance or resolution, with a newspaper to be the official publication of the City of Eagle Pass; and

WHEREAS, the City of Eagle Pass does not have an ordinance or resolution requiring the annual selection of a newspaper as the official publication of the City of Eagle Pass as required by state law; and

WHEREAS, the City of Eagle Pass desires to comply with state law regarding the selection of a newspaper as the official publication of the City of Eagle Pass.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EAGLE PASS, TEXAS, as follows:

SECTION 1. The City of Eagle Pass shall select and designate each fiscal year a newspaper as the official publication of the City of Eagle Pass for publication of City ordinances, notices, and other matters required by law, city charter, ordinance, contract, or other to be published.

SECTION 2. The fiscal year of the City of Eagle Pass shall be from October 1st of each year through September 30th of the succeeding year.

SECTION 3. The City of Eagle Pass, by and through its City Manager, shall request proposals each fiscal year from newspapers in Maverick County, Texas to become the official publication of the City of Eagle Pass no later than thirty (30) days prior to October 1st. The City Manager shall prepare and provide each year the request for proposals to be completed by newspapers interested in becoming the official publication of the City of Eagle Pass. All newspapers interested in submitting a proposal shall do so by no later than September 15th of each year, unless September 15th falls on a Saturday, Sunday or legal holiday, then on the first business day of the City of Eagle Pass following September 15th. The City Council of the City of Eagle Pass shall each fiscal year award to and designate a newspaper as the official publication of the City of Eagle Pass by resolution at their first regular meeting in October.

SECTION 4. All newspapers interested in submitting proposals for the official publication of the City of Eagle Pass shall meet the minimum

requirements set forth in Section 2 of Article 28a of the Texas Revised Civil Statutes and/or as thereafter amended or provided by state law.

SECTION 5. This Ordinance shall become effective from and after its final passage as provided by law.

READ, PASSED, AND APPROVED, ON FIRST READING this 28th Day of June, A.D., 1993.

/s/ Arturo Garcia, Mayor
Arturo Garcia, Mayor

ATTEST:

/s/ J. Irma Morales
J. Irma Morales
City Secretary

AYES: Garcia, Hernandez, Cardona, Rodriguez, and Riojas

NAYS: None

APPROVED AS TO LEGALITY:

ABSENT: None

/s/ Ricardo E. Calderon
Ricardo E. Calderon
City Attorney

READ, PASSED, AND APPROVED, ON SECOND READING this 6th Day of July, A.D., 1993.

/s/ Arturo Garcia, Mayor
Arturo Garcia, Mayor

ATTEST:

/s/ J. Irma Morales
J. Irma Morales
City Secretary

AYES: Garcia, Hernandez, Cardona, Rodriguez, and Riojas

NAYS: None

APPROVED AS TO LEGALITY:

ABSENT: None

/s/ Ricardo E. Calderon
Ricardo E. Calderon
City Attorney

READ, PASSED, AND APPROVED, ON THIRD AND FINAL READING this 20th Day of July, A.D., 1993.

/s/ Arturo Garcia, Mayor
Arturo Garcia, Mayor

ATTEST:

/s/ J. Irma Morales
J. Irma Morales
City Secretary

AYES: Garcia, Hernandez, Cardona, Rodriguez, and Riojas

NAYS: None

APPROVED AS TO LEGALITY:

ABSENT: None

/s/ Ricardo E. Calderon
Ricardo E. Calderon
City Attorney

* * *

[Minutes of]
City Council Special Meeting
Monday, August 26, 1996
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OTHER BUSINESS

5. Consideration and possible action upon an Ordinance rescinding Ordinance No. 93-12 concerning the designation of the Official Newspaper for the City of Eagle Pass.

Mayor Rogelio Flores read, for the record, in total and in full, an Ordinance captioned as follows, which said Ordinance was submitted for first reading and is hereby incorporated and made a part of these minutes:

ORDINANCE NO. _____

AN ORDINANCE REPEALING ORDINANCE NO. 93-12 PROVIDING FOR THE DESIGNATION OF AN OFFICIAL CITY NEWSPAPER; AND PROVIDING FOR AN EFFECTIVE DATE

Councilman David Riojas asked if there was any recommendation regarding what system they are going to implement for the future.

Interim City Manager, Roberto Gonzalez, stated that because of the deadline that is imposed in the existing ordinance, the immediate thing to do is to repeal said ordinance and continue with the same practice until October 1, 1996. He also stated that after conferring with legal counsel and the Mayor, it is their intent to come back before the Council and make a recommendation on whether it will be left up to Administration to decide the

procedures to be followed or if at a future time an ordinance will be considered by Council on how this advertisement will be carried out after October 1, 1996.

Mayor Rogelio Flores stated that the intention is to have both newspapers participate equally and fairly in the advertisements of the City, and maybe later in September they can come up with an agreeable agreement between both newspapers, and if that is not possible, then have Administration decide on it. He added that he had talked to Mr. Ruben Carrillo and Mr. Rex McBeath, and due to the on-going litigation between the City and the G.P. News Guide, Mr. McBeath had no comments at this time.

In response to a question posed by Councilman Jose Guerra, City Attorney, Michael C. Boyle, stated that as a home-rule City, there is no requirement that the City have an ordinance designating an official newspaper. He added that the current ordinance is not improper or wrong, but it is not necessary. He stated that what the Council is doing is repealing the existing ordinance regarding designation of an official newspaper, and that he does not believe that this would have any effect on the pending litigation or appeal. He also stated that any matter which was tried in the district court dealt with issues that existed prior to any actions the Council may take now. He advised the City Council that if they wanted to repeal the existing ordinance they could, and if they did not wanted [sic] to repeal the ordinance and keep it in effect, even though it is not necessary, then they would have to proceed with the bidding and follow the procedures, but the decision was for the Counsel to make.

In response to a comment made by Councilman Oscar L. Rodriguez, City Attorney, Michael C. Boyle, explained that when Ordinance No. 93-12 was adopted by the City, it was not necessarily required by statute to do it, but there was nothing to prevent the City from doing it. He further explained that if you are a home-rule City, you can pass an ordinance such as Ordinance No. 93-12, and there is nothing wrong with doing so, and that as a home-rule City they can also repeal it. He stated that it was not an illegal act and

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ORDINANCE NO. 96-16

AN ORDINANCE REPEALING ORDINANCE NO. 93-12, PROVIDING FOR THE DESIGNATION OF AN OFFICIAL CITY NEWSPAPER; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 28th, 1993, the City Council of the City of Eagle Pass, Texas ("City"), passed Ordinance No. 93-12 providing for a mothod [sic] by which the City would designate an official City newspaper for a specific period of time; and

WHEREAS, the City has now determined that it does not wish to be restricted by the provisions of Ordinance No. 93-12, and that the same should be in all things repealed.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EAGLE PASS, TEXAS, as follows:

SECTION 1. The City Council of the City of Eagle Pass hereby repeals Ordinance No. 93-12 providing for the designation of an official City newspaper for a specific period of time, and as repealed, such Ordinance shall have no further force or effect.

SECTION 2. This Ordinance shall become effective from and after its final passage as provided by law.

READ, PASSED, AND APPROVED ON FIRST READING this 26th Day of August, A.D., 1996.

/s/ Rogelio Flores
Rogelio Flores, Mayor

ATTEST:

/s/ J. Irma Morales
J. Irma Morales
City Secretary

AYES: Flores, Guerra, Rodriguez, Riojas, and Sandoval

READ, PASSED, AND APPROVED ON SECOND READING this 4th Day of September, A.D., 1996.

/s/ Rogelio Flores
Rogelio Flores, Mayor

ATTEST:

/s/ J. Irma Morales
J. Irma Morales
City Secretary

AYES: Flores, Guerra, Riojas, and Sandoval

NAYS: None

ABSENT: Oscar L. Rodriguez

APPROVED AS TO LEGALITY:

/s/ Michael C. Boyle
Michael C. Boyle
City Attorney

READ, PASSED, AND APPROVED ON THIRD AND FINAL READING this 26th Day of September, A.D., 1996.

/s/ Rogelio Flores
Rogelio Flores, Mayor

ATTEST:

/s/ J. Irma Morales
J. Irma Morales
City Secretary

AYES: Flores, Guerra, Rodriguez, Riojas, and Sandoval

NAYS: None

ABSENT: None

APPROVED AS TO LEGALITY:

/s/ Michael C. Boyle
Michael C. Boyle
City Attorney

January 14, 1997

To Whom It May Concern:

The following is a schedule the City of Eagle Pass will use when publishing ordinances, legal notices and public notices:

1. Beginning January 15, 1997 until July 14, 1997, the City will publish its ordinances, legal notices and public notices in the Guide Publishing Company.

2. Beginning July 15, 1997 until January 14, 1998, the City will publish its ordinances, legal notices and public notices in the News Gram.

3. The City will make every effort to distribute all of its other advertising equally amongst all the News Media.

4. There might be overlapping periods where ordinances or notices will be published in the print media contrary to the schedule on items 1 and 2 above. That will only occur if we had previous commitments to advertise in that print media.

5. The City is not designating any print media as the City's official newspaper.

6. The print media must not charge more than their lowest published rate as required by law for advertising and publishing.

7. A certification from the print media certifying that they are not charging the City more than their lowest published rate as required by law for advertising and publishing.

8. The city must be invoiced on a monthly basis.

It is the City's intention to receive the best possible service and prices while being fair with all the News Media.

If there are any questions regarding the above, contact Mr. Pete Sepulveda, Jr., City Manager.

[LOGO]

HAND-DELIVERED

January 14, 1997

Mr. Ruben Carrillo Mazuka
The News Gram
1131 North Bibb
Eagle Pass, Texas 78852

Dear Mr. Mazuka:

Attached is a schedule the City will follow when publishing ordinances, legal and public notices.

It [sic] you have any questions, call me.

Sincerely,

CITY OF EAGLE PASS

/s/ Pete Sepulveda, Jr.
Pete Sepulveda, Jr.
City Manager

1/16/97
AMR
xc: Manuel Contreras,
Finance Dir.
Irma Morales,
City Secretary

psj:sg
Attachment

[LOGO]

HAND-DELIVERED

January 14, 1997

Mr. Rex McBeath
The Guide Publishing Company
P.O. Box 764
Eagle Pass, Texas 78853-0764

Dear Rex:

Attached is a schedule the City will follow when publishing ordinances, legal and public notices.

If you have any questions, call me.

Sincerely,

/s/ Pete Sepulveda, Jr.
Pete Sepulveda, Jr.
City Manager

1/16/97
AMR
xc: Manuel Contreras,
Finance Dir.
Irma Morales,
City Secretary

psj:sg

Attachment